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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/551,645	04/18/2000	MYONG-JOON HAHN	105997	1993

25944 7590 10/10/2002

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EXAMINER
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ZEMAN, ROBERT A

ART UNIT	PAPER NUMBER
1645	1b

DATE MAILED: 10/10/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/551,645	HAHN, MYONG-JOON
Examiner	Art Unit	
Robert A Zeman	1645	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 23 July 2002.

2a) This action is **FINAL**.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-3 and 16 is/are pending in the application.

4a) Of the above claim(s) 1-3 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 16 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

    If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) All b) Some \* c) None of:

        1. Certified copies of the priority documents have been received.

        2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

        3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    \* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

    a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.

4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_.

### **DETAILED ACTION**

The amendment filed on 7-23-2002 and the response filed on 2-13-2002 are acknowledged. Claims 5-15 have been canceled. Claim 16 has been added. Claims 1-3 and 16 are pending. Claims 1-3 remain withdrawn from consideration. Claim 16 is currently under examination.

Applicant states that they did not receive an Office Action summary with the Office action mailed 10-19-01. A copy of said summary is attached hereto.

#### ***Claim Rejections Withdrawn***

The rejection of claim 4 under 35 U.S.C. 112, second paragraph, as being vague and indefinite is withdrawn. Cancellation of said claim has rendered the rejection moot.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 16 is rejected under 35 U.S.C. 102(b) as being anticipated by Hahn et al. (Gene, 1993, Vol. 133, pages 129-133) for the reasons set forth in the rejection of claim 4 in Paper No. 8.

As outlined previously, Hahn et al. disclose an amino acid which is 100% identical to Applicant's SEQ ID NO:1 and a nucleic acid that is 100% identical to Applicant's SEQ ID NO:2. Hahn et al. further disclose that monoclonal antibodies to the crystalline surface layer protein (SLP) of *Rickettsia typhi* were made. Additionally, the epitope recognized by one of the monoclonal antibodies (SRT10, IgG2a) to 10 amino acid residues of SLP was determined. This monoclonal antibody that recognizes SRT10 anticipates the instant claim. Finally, the binding efficiencies of the instant antibody and that of Hahn et al. are the same.

Claim 16 is rejected under 35 U.S.C. 102(b) as being anticipated by Carl et al. (U.S. Patent 5,783,441) for the reasons set forth in the rejection of claim 4 in Paper No. 8.

As outlined previously, Carl et al. disclose a peptide that differs by only one amino acid from Applicant's SEQ ID NO:1. Carl et al. further disclose that monoclonal antibodies directed against different linear epitopes present on the rickettsial crystalline surface layer protein antigen (SPA) were made. This would include monoclonal antibodies made against the epitope set forth in SEQ ID NO:1.

### ***Conclusion***

No claim is allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert A Zeman whose telephone number is (703) 308-7991. The examiner can normally be reached on M-Th 7:30 am - 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith can be reached on (703) 308-3909. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4242 for regular communications and (703) 308-4242 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Robert A. Zeman  
October 7, 2002

*629*  
LYNETTE R. F. SMITH  
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